PUBLIC PROSECUTOR v. HALED

[O.Cr.J. (Yusoff Mohamed J.) January 28, 1980]
[Kuching — Criminal Trial No. K4 of 1979]

Criminal Law and Procedure — Amended charge of "voluntarily causing hurt by means of an instrument likely to cause death" — Sentencing — Principles applied.

The accused in this case was originally charged with an offence for attempting to commit robbery, punishable under section 394 of the Penal Code. The charge was subsequently amended to one under section 324 of the Penal Code, an offence for voluntarily causing hurt by means of an instrument likely to cause death. When his defence was called, the accused elected to give statement from the dock. Later he changed his mind saying that he had nothing to say and had no witnesses to produce.

Evidence revealed that on May 19, 1977 at about 9.50 p.m. the accused went to the complainant's shop at Market Street, Kuching which had been closed. The complainant was closing his account for the day when he heard someone knocking at the door. The complainant opened the door and the accused entered with another person. While the other person was talking to the complainant the accused hit the complainant on the head with a hammer. The complainant lost his consciousness at the blow and when he recovered the accused was still near him holding the hammer. The complainant grabbed hold of the accused and shouted for help. When the police arrived at the scene, they saw that the accused was struggling to free himself from the complainant and the hammer was still in the accused's hand. The complainant suffered injuries and was hospitalised for four days.

The accused was convicted on the amended charge. He was sentenced to three years' imprisonment to be followed by two years police supervision and was ordered to be given six strokes of the rotan. He appealed against sentence.

Held: (1) having considered the fact that he had four previous convictions, that his career in crime was prompted by his addiction to drugs and also the serious manner in which he committed the offence, a sentence of imprisonment only was not sufficient. Some corporal punishment was necessary. Hence, the order of six strokes of the rotan;

(2) the police supervision was imposed to curtail his tendency to commit a more serious crime.

CRIMINAL TRIAL.

Augustine Liom (Deputy Public Prosecutor) for the prosecution.

Yusoff Mohamed J.: The accused, Haled bin Rambli, was originally charged with an offence for attempting to commit robbery, punishable under section 394 of the Penal Code. At the close of the case for the prosecution, I found that the charge was not proved. Some evidence was lacking to connect the accused with the other person, still at large, who was alleged to have been in the company of the accused and allegedly to have opened the cash box in the complainant's (PW4) shop.

In that event, I amended the charge to one under section 324 of the Penal Code, an offence for voluntarily causing hurt by means of an instrument likely to cause death. When his defence was called, the accused elected to give statement from the dock and later changed his mind saying that he had nothing to say and had no witnesses to produce.

There is strong evidence against him showing that on the date in question, May 19, 1977 at about 9.50 p.m. he went to the complainant's shop at Market Street, Kuching which had been closed. The complainant was closing his account for the day when he heard someone knocking at the door. Complainant opened the door and the accused entered with another person. While the other person was talking to the complainant the accused hit the complainant on the head with a hammer. It was a fairly large and heavy hammer, Exhibit P2. The complainant temporarily lost his consciousness at the blow. When he recovered the accused was still near him holding the hammer. The complainant grabbed hold of the accused and shouted for help. When the police (PW1 and another PC) arrived at the scene, they saw that the accused was struggling to free himself from the complainant. The accused was still holding the hammer in his hand.

The accused was arrested and later admitted what he had done, in his caution statement at Exhibit P3. The complainant suffered two injuries, one at the back of his head and another on his forehead and he was hospitalised for four days.

On this evidence I found the accused guilty of the amended charge. He was convicted and sentenced to three years' imprisonment to be followed by two years police supervision. I also ordered that the accused be given six strokes of the rotan. He now appeals against this sentence.

In imposing the sentence on the accused, I have taken the following into consideration. Firstly he had four previous convictions, two under section 379 and another two under section 380 of the Penal Code, and now he is graduating to a more serious crime. It seems that his career in crime is prompted by his addiction to drugs. He confessed that he was a drug-addict.

Secondly, the manner in which he committed the offence was very serious. It involved violence directed at an innocent man. He had used a fairly heavy hammer to strike at the complainant's head. It was miraculous that the blow did not crack the complainant's skull or the injuries to his head did not affect his brain.

In order to deter the accused's violent character and also as deterrence to others having tendency to commit similar crime, I am of the view that, a sentence of imprisonment only is not sufficient. Some corporal punishment would be necessary. And for this reason I ordered six strokes of whipping to be administered on the accused. The police supervision was imposed having regard to his previous convictions and also in order to curtail his tendency to promote himself to a more serious crime.

For these reasons, I am of the opinion that the sentence imposed on the accused is appropriate.

Order accordingly.